

March 13, 2008

To: Arche L. McAdoo, Interim Deputy Finance Director  
Through: John Allore, Treasury Manager  
From: Paul Mason, Business License Supervisor  
Subject: General Merchant/Beer and Wine Privilege License Issuance

### **Executive Summary**

The purpose of this is to explain how the City of Durham business license taxes are structured. Business owners doing business within the limits of the City of Durham are subject to the business privilege license requirements set forth in the City's Code of Ordinances. The North Carolina General Assembly through schedule B of the Revenue Act and the City of Durham through its City Code have authorized this requirement.

### **Who Must Obtain A Privilege License**

Unless provided for in the City of Durham Ordinance, all businesses, trades, and professions conducting a trade, occupation, performing a service, or selling goods or services within the City are required to purchase a Privilege / Business License prior to beginning operations.

### **Licensing Period**

A Durham General Merchant Business Privilege License must be purchased annually and is issued for a one year period that begins July 1 and ends June 30th of the following year. This License is required to legally operate anywhere within the City of Durham. This requirement applies to all businesses, whether operated for profit, non-profit or home based.

The license to sell beer and wine must also be purchased annually. The business year for beer and wine business privilege licenses begins on May 1, and ends April 30th of the following year. Each business located in the City of Durham that is required by law to purchase an **ABC (Alcoholic Beverage Control)** License or Permit from the State of North Carolina are also required to purchase a local Beer and/or Wine License.

Once the ABC License has been purchased from the State, this license must then be shown to the Business License Office prior to the issuance of a local license. Beer and Wine licenses expire on April 30th and must be renewed by May 1st of each year. Businesses located inside the City of Durham pay both the City and County license tax.

### **Fees**

Appendix A License and Privilege Tax Article II. Levy Section 9. Computation of tax based on gross receipts.

(a) When the amount to be paid for a license depends upon the amount of the gross sales or receipts of the business or enterprise, the person applying for the license must render to the tax collector a statement of the preceding calendar year's gross sales or receipts of each

store or place of business for which a license application is being made. The tax collector may also require any other proof of such gross sales as he may deem necessary.

(b) If a business has not been in operation long enough for the information required in subsection (a) of this section to be available, the tax collector shall estimate gross receipts for the business, based on gross receipts of comparable businesses or any other information that the tax collector considers useful. On or before July 30 immediately after each license year, each licensee for whom the tax paid in the license year just concluded was based on estimated gross receipts shall submit to the tax collector a sworn final report showing the amount of gross receipts for the license year. If the amount shown is more than estimated gross receipts, the licensee shall pay the amount of additional tax that would have been due had the estimate been accurate. If the amount shown is less than estimated gross receipts, the city shall refund to the licensee the difference between the actual tax paid and the amount of tax that would have been due had the estimate been accurate.

**General Merchant Privilege Business License Tax** based upon gross receipt are calculated based upon the following formulas:

**Service Business - Schedule A – Section 72**

\$50.00 per year for the first \$15,000 of gross receipts plus \$0.50 for each additional \$1,000  
(Round up receipts to nearest \$1,000) **Maximum Tax \$8000.00**

**Retail Merchant - Schedule A: Section 73A**

\$50.00 per year for the first \$15,000 of gross receipts plus \$0.50 for each additional \$1,000  
(Round up to nearest \$1,000) **There is no Maximum Tax for this calculation**

**Wholesale Merchant – Schedule A: Section 73B**

\$50.00 per year for the first \$100,000 of gross receipts plus \$0.25 for each additional \$1,000  
(Round up to nearest \$1,000) **Maximum Tax \$2,500**

**Retail & Wholesale Merchant - Schedule A: Section 73D**

\$50.00 per year for the first \$15,000 of gross receipts and \$0.50 for each additional \$1,000  
(Round up to nearest \$1,000) **There is no Maximum Tax Rule for this calculation**

**Manufacturers - Schedule A: Section 74**

\$50.00 per year for the first \$15,000 of gross receipts and \$0.50 for each additional \$1,000.  
(Round up to nearest \$1,000) **Maximum Tax \$2,500**

Other fees are calculated based upon a Flat rate set forth by the State of NC and here is a partial listing of some of these fees:

<b>Classification</b>	<b>Fee</b>
Amusements (Circuses, Menageries, Wild West, Dog and/or Pony Shows, etc.	25.00
Pawnbrokers	100.00
Peddlers by foot	10.00
Peddlers from a vehicle (see food vending below)	25.00
Itinerant Merchants	100.00
Specialty Market Operators	200.00
Installing Elevators and Sprinkler Systems	100.00
Fortune-tellers, Palmist, etc.	200.00
Music Machines / per machine / per location	5.00
Video Machines / per machine / per location	5.00
Firearm Dealers	50.00
Dealers in Other Weapons	200.00
Laundries (Outside City)	12.50
Loan Agencies or Brokers	100.00
Service Stations (Mechanical Repair)	12.50
Wholesale Auto Supply	37.50
Automobile (Dealer)	25.00
Motorcycle Dealers	12.50
Employment Agents	100.00
Pool Tables - per. location	25.00
Bowling Alleys (per lane)	10.00
Riding Devices, Swimming Pools, Skating Rink	25.00
Amusements - Outdoor Theaters	100.00
Amusements - Motion Pictures - Admissions (per. screen)	200.00
Amusements - Not Otherwise Taxed	25.00
Collections Agencies	50.00
Undertakers and Retail Coffin Dealers	50.00
Contractors and Construction Companies (licensed by the State of NC )	10.00

Hotels, Motels, Tourist Courts, Homes	\$1 per. room, (minimum) 25.00
Restaurants - up to 5 seats	25.00
Restaurants - more than 5 seats	42.50
Security Dealers	50.00
Persons, Firms or Corps Selling Certain Oils	50.00
Dry Cleaning	50.00
Barbershops and Beauty Salons (per. operator)	2.50
Tobacco Warehouses (each warehouse)	50.00
Laundries - inside the city	50.00
Advertising	35.00
Plumbers, Heating Contractors and Electricians	50.00
Branch or Chain Stores / per location	50.00
Bike Dealer	25.00
TV's, Tapes, etc.	5.00
Sundries, Bubble Gum / Vending Machines / each	4.00
Utility Companies - Electric	1,500.00
Utility Companies - Gas	1,000.00
Express Service Companies	75.00
Telegraph Companies	50.00

**Penalty for Late Purchase/Payment of a City of Durham Privilege Business License:**

Any business conducting business activity within the City limits of Durham without a license, shall be liable for back (unpaid) business license taxes and shall be subject to a penalty of 5% of the annual license tax for each month that the business operates without a license, up to a maximum of 25% per annum.

**Beer and Wine Business License Tax**

The total amount of Beer and Wine License Tax due will vary for businesses with multiple locations. These licenses cannot be prorated. Businesses inside the City of Durham pay both City License Fees and County License Fees which are set by the State of NC:

**Excerpt from NC General Statute § 105-113.77. City beer and wine retail licenses.**

**§ 105-113.77. City beer and wine retail licenses.**

(a) License and Tax. – A person holding any of the following retail ABC permits for an establishment located in a city shall obtain from the city a city license for that activity. The annual tax for each license is as stated.

ABC Permit	Tax for Corresponding License
On-premises malt beverage.....	\$15.00
Off-premises malt beverage.....	5.00
On-premises unfortified wine, on-premises fortified wine, or both.....	15.00
Off-premises unfortified wine, off-premises fortified wine, or both.....	10.00

(b) Tax on Additional License. – The tax stated in subsection (a) is the tax for the first license issued to a person. The tax for each additional license of the same type issued to that person for the same year is one hundred ten percent (110%) of the base license tax, that increase to apply progressively for each additional license. (1985, c. 114, s. 1.)

**Excerpt from NC General Statutes § 105-113.78. County beer and wine retail licenses.**

**§ 105-113.78. County beer and wine retail licenses.**

A person holding any of the following retail ABC permits for an establishment located in a county shall obtain from the county a county license for that activity. The annual tax for each license is as stated.

ABC Permit	Tax for Corresponding License
On-premises malt beverage.....	\$25.00
Off-premises malt beverage.....	5.00
On-premises unfortified wine, on-premises fortified wine, or both.....	25.00
Off-premises unfortified wine, off-premises fortified wine, or both.....	25.00

(1985, c. 114, s. 1.)

**Excerpt from NC General Statutes § 105-113.79. City wholesaler license.**

**§ 105-113.79. City wholesaler license.**

A city may require city malt beverage and wine wholesaler licenses for businesses located inside the city, but may not require a license for a business located outside the city, regardless whether that business sells or delivers malt beverages or wine inside the city. The city may charge an annual tax of not more than thirty-seven dollars and fifty cents (\$37.50) for a city malt beverage wholesaler or a city wine wholesaler license. (1985, c. 114, s. 1; 1998-95, s. 21.)

**Penalty for Late Purchase/Payment of a Beer and Wine License:** An additional tax equal to five percent (5%) of the amount prescribed for such license per month or fraction thereof until paid in full. Not to exceed twenty-five percent (25%) of the tax amount due and in no case shall be less than \$5.00. No license shall be granted until the license tax plus any additional tax has been paid in full.

## **Background**

**ABC Permit Process** - The ABC Commission has the sole authority to permit the sale of beer and wine. Prior to issuing an ABC permit notice is given to the Police Department, which has been designated by the City Council as the reviewing agency. The Police Department has 15 days to file a written objection to the issuance of the permit. In addition to complying with all applicable building and fire codes, the factors considered by the Commission are:

- The reputation, character and criminal record of the applicant;
- The number of places already holding ABC permits in the neighborhood;
- Parking facilities and traffic conditions in the neighborhood;
- Kinds of businesses already in the neighborhood;
- Whether the establishment is located within 50 feet of a church or public school or church school;
- Zoning laws;
- The recommendation of the local governing body; and
- Any other evidence that would tend to show whether the applicant would comply with the ABC laws and whether operation of this business at that location would be detrimental to the neighborhood.

Under current law, the Commission is given sole power, in its discretion, to determine the suitability and qualifications of an applicant for a permit. The Police Department is currently handling the review of ABC permit applications and recommendations concerning the suitability of a person or a location to hold an ABC permit.

For violations of the ABC laws, the Commission is also empowered to suspend or revoke an ABC permit. Any such revocation automatically revokes the local City license. The applicant must be allowed a state administrative hearing if the case is contested.

**City Beer and Wine License Issuance** - Local regulations require that a person holding an ABC permit for the sale of beer and wine obtain a City License and pay an annual tax. Local governments can refuse to issue a license if it finds the applicant has committed any act or permitted any activity in the preceding year that would be grounds for revocation of an ABC permit. Prior to such action, however, Council is required to offer the applicant a full blown, quasi-judicial hearing and render a decision in accordance with all of the procedural and substantive standards applicable to such a hearing procedure. In this regard, please note that the ABC Board is already authorized to revoke permits for the same reasons (i.e. violation of the ABC laws) and the effect of such a revocation is to automatically revoke the related city license. And, as you may recall, the City is given an opportunity to enter its objection with the ABC board prior to issuance of the permit. Additionally, local governments can petition the ABC Board to deny or revoke a permit by presenting evidence of acts that would be grounds for denial or revocation of an ABC permit under G.S. 18B-104. This would be in addition to and coordinated with investigative and enforcement actions taken by the Police Department.

NC General Statutes 105-113.70 and 18B-104 d. is the authorizing legislation for issuance of City beer and wine licenses. There are no provisions in the statutes to allow a municipality to charge more for beer and wine than what is outlined in the NC General Statutes.